DOCUMENT RESUME

ED 166 748 CS 502 397

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TITLE Opening Address of Chairman Michael Pertschuk.
PUB DATE Dec 78
NOTE 12p.; Opening address of the Federal Trade Commission Symposium on Media Concentration (Washington, D.C., December 14-15, 1978)

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS Civil Liberties; Communication (Thought Transfer); Competition; *Economic Factors; *Federal Regulation; *Freedom of Speech; *Mass Media; *Newspapers; *Power Structure
IDENTIFIERS Federal Trade Commission; *Ownership

ABSTRACT

Presented to a symposium sponsored by the Federal Trade Commission (FTC) to consider some of the issues involved in the continuing growth of a few large companies in the field of communication, this address cites statements of concern, made by the Supreme Court and by some periodicals, that excessive concentrations of power threaten First Amendment rights. The address indicates that the FTC is concerned not only with possible antitrust action but also with helping the public understand corporate structure; that some of the difficulties in regulating the industry are defining the "media industry," the products, and who the customers are--advertisers or readers; that instances have occurred in which a newspaper was saved only because a large media company purchased it, as in the case of the "Washington Star"; and that sometimes the size of a chain may itself be a protection from economic and political pressures. (TJ)

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OPENING ADDRESS OF CHAIRMAN MICHAEL PERTSCHUK

Federal Trade Commission

Symposium On Media Concentration

Washington, D.C.

December 14 and 15, 1978

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

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Rather than my greeting you, many of you should probably greet me as the lions greeted the novice lio tamer as he stopped into the ring: "Welcome to a venture which promises problematic rewards and immoderate risks." For if there is an American institution more chronically ill-tempered at any form of external scrutiny than the media we have not encountered it.

Nor is its sensitivity ill-founded. The First Amendment looms as a warning beacon to any branch of government which would encroach upon the independence of the media no matter how wholesome its intentions. And it is appropriate to keynote this symposium with a reaffirmation of our commitment to the root objectives of the First Amendment, including the assurance that our society will provide as many and varied outlets for speech as there are voices seeking to be heard.

Speech is an illusory right without a voice box; and one question which must be addressed in this sympo is whether we are in an age of media giantism in which we must confront A.J.Liebling's aphorism that in this country freedom of the press is guaranteed to those wh one.

Therein lies the essential dilemma which brings u together: We must examine whether the right of free sp can be disassociated from the economic structure of th media which gives access to that speech. Is there substance to the fear that freedom of speech will be

impacted by patterns of corporate change? Is there a relationship between changes in corporate structure and the independence and accessibility of the media? The First Amendment protects us from the chilling shadow of government interference with the media. But are there comparable dangers if other powerful economic or political institutions assume control of the media?

That is why this symposium has been convened by an agency concerned with competition policy -- because our competition and free speech laws and policies flow together in that broad confluence of American tradition which harbors deep distrust of excessive concentrations of power--distrust of the suppression of the diversity or the independence of economic and political entities in our society. This confluence was affirmed by the Supreme Court in the Associated Press case, in which the Court made it clear that the media are not somehow exempt from the antitrust laws. There the Court said:

> It would be strange indeed . . . if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom . . . .

> Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. . . . Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. 326 U.S. 1, 20 (1948).

This symposium is a response to expressions of concern raised by a broad spectrum of voices, including voices within the media themselves. Thus, in a special report on "America's Press-Too Much Power For Too Few", U.S. News and World Report warned that

> "new empires of the printed word are on the rise as newspaper chains and vast conglomerates swallow up one publisher after another. Concern grows as they get more and more say over what Americans read."

That report examined the new interweaving or conglomeration of the media -- book publishers, magazines, newspapers and

broadcasting. Business Week, Fortune, Time, and Newsweek have each called attention to evolving patterns of concentration in the newspaper industry. Recently Fortune observed:

> "Chain owners have been so persuasive lately that independent newspapers now qualify as an endangered species. By one recent count, only 691 of the 1,759 daily newspapers in the U.S. have avoided being gobbled up by the chains. During the past five years, the chains have acquired dailies at the rate of fifty-five a year. If that trend continues, independent papers soon will be as scarce as whooping cranes, timber wolves, and teenaged virgins."

Fortune continued:

> "A lot of people are disturbed by the growing concentration of newspaper ownership. Concentration is nothing new in American business, of course, but newspapers are a special case. As disseminators of facts and ideas, they have a more profound potential for good or evil than an ordinary enterprise. The prospect of America's powerful, constitutionally protected press in the hands of a few proprietors seems a lot scarier than concentration in, say, aluminum bars--or even automobiles."

The FTC has received complaints and petitions for action in this area, such as the petition submitted by the Authors Guild which called upon us to halt what they characterized as the "march to economic concentration and oligopoly" in book publishing.

Given the pattern of media mergers and commentary on it, the Commission could have simply directed its Bureau of Competition to open a broad industrywide law enforcement investigation. But we are acutely aware of how much we do not yet know about both the economic and free speech implications of trends toward concentration in the media. Thus, we chose to proceed with deliberation, determined to educate ourselves and the public.

Moreover, we're not simply an antitrust law enforcement agency. In Section 6 of the Federal Trade Commission Act, Congress charged us with a primary role in aiding public understanding of corporate structure and behavior through studies, through investigations, and through appropriate alternative means of public dialogue; thus this symposium.

I'm sure you understand the difficulty of many of the issues we face. For example, in some industries the structure and the dynamics of the market are relatively simple to comprehend; for media they are extremely complex. What is a "media industry" or a relevant "media market"? Is there a "magazine industry"? Do trade magazines and popular magazines compete?

Do national magazines compete with other media -- newspapers, television and radio? If so, do they compete for readers or advertisers or both?

This leads us to another puzzle. In most areas of the economy we can at least define with some certainty an industry's products. Yet what are the "products" of media? There are those who believe that television as it is structured in this country has become simply a marketing device for selling audiences to advertisers. Who are the consumers of newspapers -- the readers or the advertisers?

In approaching any other industry we would normally ask if its structure and performance assure consumers a reasonable variety of products and services at the lowest prices. But that type of analysis may not satisfy some in light of the bed-rock societal values which undergird the media. Let me give you an example.

Assume for a moment that as a result of mergers and the emerging dynamics of the book publishing industry it becomes apparent that a single type of book would be published in the near future, but that that type of book would be very inexpensive. Assume that antitrust intervention might assure an alternative industry structure which

would produce a wider variety of books, but at a slightly higher price per book. Assume further that the structure which produced the lowest cost books consisted of a very few, very large, very efficient firms, whereas the alternative structure was made up of a great many smaller, varied and less efficient firms. Should pure economic efficiency criteria prevail, or should the principles of the First Amendment infuse antitrust enforcement so that those impulses inherent in the antitrust laws -- variety, independence and diversity -- guide the application of competition principles to the media? On the other hand, should any government agency even be examining whether the media is likely to publish "enough" books of "different" types? Does such an inquiry itself raise First Amendment concerns?

Today we have come to view competition as preventive medicine for regulation. Since direct continuing governmental involvement through regulation of the daily business affairs of the media must be avoided if the independence of the media is to be held inviolate, does it perhaps make sense for competition policy to be especially vigilant in assuring the preservation of a highly competitive media structure?

Does the policy suggested by the convergence of First Amendment and competition principles--that media diversity and independence are essential safeguards of a free society--dictate a lower threshold of unacceptable concentration in the media? Or does the First Amendment's stricture against undue government intervention dictate governmental restraint even in the non-regulatory form of antitrust law enforcement action.

There remains much that we do not know. Who among us was not relieved when the Washington Star was apparently snatached from the perils of bankruptcy by Time, Inc.? No citizen of Washington could be indifferent to the fate of the Star which in the past several years has gathered editorial strength and vigor. Can you picture Washington, the political capital of the nation, as a one-newspaper town? Yet some observers, at least, were given pause by the knowledge that together with the Star, Time Inc. has now accumulated a leading national magazine, a film production company, a cable programer, a cable operator, and a book of the month club.

Nor is it self-evident that the independent publisher of a local newspaper in a medium-size midwest

city, limited in resources and pressed by rising costs, is necessarily more independent of the economic establishment in that community than the management of a newspaper group, or that there are not economies of scale which enhance the independence and the ability of that group to resist undue local economic or political pressure. Are we able to generalize on the relationship between vigorous economic competition and the vigor of public discourse?

In short, we have a fairly good idea of what some of the issues are. We know that we cannot in good conscience ignore the apparent trend or pace of developing concentration among media. We also know that we have yet to comprehend the impact of that development upon the performance and the independence of the media -- in terms both of industry structure and the free flow of diverse speech. This symposium is designed not only to assist a law enforcement agency answer questions which will help us determine our own enforcement policy, but also to help raise the level of public consciousness and the quality of public debate on issues of fundamental concern to our society. For, in the immortal words of the wife of Willy Loman, "Attention must be paid."

I want to thank in advance our speakers and panelists, as well as other participants, for taking the time to contribute to the program. I also want to stress that a report of the proceedings will be published and comments from the public will be solicited. Those of you who did not have an opportunity to participate as panelists or speakers -- and I know there are several of you representing important viewpoints -- are encouraged to make written submissions for inclusion in the published report of the proceedings. Thank you.